

NOV 12 2013

FCC Mail Room

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
DIOCESE OF GAYLORD)
)
CGB-CC-0270)
CG Docket No. 06-181)

APPEARANCE

To: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

NOW COME the Diocese of Gaylord, by its attorney, ROBERT T. WESTERMAN II,
PLC, and enter his Appearance on behalf of the Diocese of Gaylord, pursuant to the statutes
made and provided.

Dated: November 8, 2013



Robert T. Westerman II (P-28256)
ROBERT T. WESTERMAN II, PLC
Attorneys for Diocese of Gaylord
117 W. First Street
Gaylord, MI 49735
(989) 732-2400

0+2

Before the
Federal Communications Commission
Washington, D.C. 20554

Received & Inspected

NOV 12 2013

FCC Mail Room

In the Matter of)
)
CLOSED CAPTIONING et al.)
)
New Beginning Ministries)
)
Petitions for Exemption from Closed Captioning)
Of the Diocese of Gaylord)
)
CGB-CC-0270)
CG Docket No. 06-181)

To: Darlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**RESPONSE TO FEDERAL COMMUNICATIONS COMMISSION REQUEST
FOR SUPPLEMENTAL INFORMATION DATED SEPTEMBER 27, 2013**

Robert T. Westerman II
ROBERT T. WESTERMAN II, PLC
Attorney for Diocese of Gaylord
117 W. First Street
Gaylord, MI 49735
(989) 732-2400

November 8, 2013

**RESPONSE TO FEDERAL COMMUNICATIONS COMMISSION REQUEST
FOR SUPPLEMENTAL INFORMATION DATED SEPTEMBER 27, 2013**

Petitioner, Diocese of Gaylord, requested an exemption from closed captioning rules on or about December 26, 2005, and again on or about January 17, 2012, with regard to their one weekly Eucharistic Liturgy (Mass) recorded at St. Mary Cathedral in Gaylord, Michigan. On or about September 27, 2013, the Federal Communications Commission requested supplemental Information and a refreshing of the record, setting forth a receipt date of October 28, 2013.

Petitioner, Diocese of Gaylord, on October 25, 2013, filed a request for extension of time to provide a response for two significant reasons:

1. The recent government shutdown closed the FCC's website and barred the ability to perform research on FCC decisions, review regulations, responses, etc.

Consequently, the Diocese of Gaylord was unable to complete those tasks in a timely manner.

2. The Bishop is the head of the Diocese of Gaylord, and as such, has the ultimate canonical right to make authoritative decisions on behalf of the Diocese of Gaylord. On or about September 24, 2013, the Vatican appointed Bishop Bernard A. Hebda of the Diocese of Gaylord, as Coadjutor Archbishop of the Archdiocese of Newark, with the appointment being effective immediately, leaving the Diocese of Gaylord without a Bishop. A new bishop may not be appointed to the Diocese of Gaylord for several months.

The following is Petitioner's response (as much as currently is possible under the circumstances of paragraphs 1 and 2 above) to the earlier FCC request for Supplemental Information:

I. Commission's Pertinent Rules and Statutes.

47 U.S.C. §613(e) and 47 C.F.R. §79.1(f) state that exemptions may be granted for a specific video program or video programming provider upon finding that the closed captioning requirements will result in an undue burden.

“The term ‘undue burden’ means significant difficulty or expense.” 47 C.F.R. §79.1(f)(2).

Also, any video program or video programming provider shall be exempt whenever it is a locally produced and distributed non-news program with no repeat value. 47 C.F.R. §79.1(d)(8). In a recently issued Order granting exemptions from the closed captioning requirements under the undue burden standard, the consumer and Governmental Affairs Bureau noted that it is important to:

“Balance the need for closed captioned programming against the potential for hindering the production and distribution of programming”.¹

The Bureau goes on to say that when considering an exemption petition filed by a non-profit organization that does not receive compensation from the airing of its program and, in the absence of an exemption, may terminate or substantially curtail the program:

“We will be inclined favorably to grant such a petition because . . . this confluence of factors strongly suggest that mandated closed captioning would pose an undue burden on such a petitioner.”²

¹ *In the Matter of Anglers for Christ Ministries, Inc., New Beginning Ministries, Video Programming Accessibility Petitions for Exemption from Closed Captioning Requirements, Case Nos. CGB-CC-0005 and CGB-CC-0007, Memorandum Opinion and Order, DA 06-1802, (CGB rel. Sept 11, 2006).*

² *Id.* At para 11 (citation omitted).

That is exactly the situation the Diocese of Gaylord is facing if the exemption is not granted. (See Affidavit of Candace Neff, Communications Director of the Diocese of Gaylord, attached hereto as Exhibit 1).

II. Undue Burden and Other Relevant Factors.

A petition urging undue burden can also show other relevant factors. 47 C.F.R. §79.1(f)(3). One particularly relevant factor regarding the unique program of a Catholic Mass is how it falls in the cracks of the regulatory system. The exemption for locally produced non-news programming with limited repeat value was intended, in the first order in MM, Dkt. No. 95-176, to protect “a limited class of truly local materials” which was “locally created” and is presented essentially as a ‘public service’” and which has “an inherently fragile economic support system”. *In the Matter of Closed Captioning and Video Description of Video Programming*, MM. Dkt. 95-176, 13 F.C.C.R. 3272 (1997) (¶158). The exemption was intended to protect the uniquely local non-news public interest programming, such as the weekly Catholic Mass. However, as the Commission has repeated in its order overturning the exemptions, “responsibility for captioning ultimately rests with the VPD’s”. *In the Matter of Anglers for Christ*, 26 Rcd 14941(2011) (¶24). However, experience has shown that the broadcasters do not provide this uniquely local, no-repeat value programming; independent programmers provide it. Experience has also shown that although the responsibility for captioning lies with the broadcast licensee, no such captioning or support for captioning is provided. This programming, then, is left in regulatory limbo. Petitioner urges that this regulatory dead zone for important local programming constitutes “other relevant factors” which can support a petition for undue burden. Additionally, because the Mass is a non-repeatable program and there are substantial logistical difficulties being faced by this rural Diocese in providing closed captioning for this televised

Mass, the Diocese submits that those are exactly the type of difficulties which impose and define an undue burden upon this Petitioner as envisioned by the Statutes and CFR 79.1(f)(2) of the Commission's rules. According to the Commission: "Undue burden shall be evaluated with regard to the individual outlet." While other larger metropolitan Diocese's might have many different options at their disposal which would allow for closed captioning on such a tight time-frame, the difficulties facing this Diocese unfortunately do not. The situations are exactly the reason why the Commission has established exceptions to the general rule and are allowing exemptions to individual outlets when circumstances so warrant.

In addition to the "no repeat value" nature of the taped Mass being a factor in the logistical difficulty and undue burden particularly facing the Diocese of Gaylord in this instance, Section 79.1(d)(8) of the Commission's Rules allows an exemption, in and of itself, for "locally produced and distributed non-news programming with no repeat value". It has been suggested by at least one opposition statement that Section 79.1(d)(8) is inapplicable allegedly due to the perceived limited definition of "video programming distributor" through the Rules. However, Section 79.1(d)(8) specifically states that "locally produced and distributed non-news programming with no repeat value" is exempt. Also, Section 79.1(a)(2) describes a video programming distributor as:

"Any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission. An entity contracting for program distribution over a video programming distributor . . . shall itself be treated as a video programming distributor for purposes of this section . . . to the extent such video programming is not otherwise exempt from captioning, the entity that contracts for its distribution shall be required to comply with the closed captioning requirements of this section."

In the instant case, since the Diocese of Gaylord is locally producing and distributing, or contracting to distribute the video program, the exemption allowed under Section 79.1(d)(8) for “no repeat value” is wholly applicable. In fact, the Sunday Mass is precisely the type of locally produced, non-news programming that should qualify for this exemption. It is the only Catholic Mass produced and broadcast to the entire Northern Michigan television audience. Without it, thousands of ill, disabled, elderly and homebound individuals will not be able to partake in this Eucharistic Liturgy.

III. Incorporation and Reiteration.

Petitioner hereby incorporates and reiterates by reference its *PETITION REQUESTING EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS FILED BY DIOCESE OF GAYLORD*, its *AFFIDAVIT OF CANDACE NEFF*, and all attachments thereto dated January 17, 2012, along with its *RESPONSE TO OPPOSITION TO PETITION FOR EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS FILED BY DIOCESE OF GAYLORD* and all Affidavits and attachments thereto and hereby submits an updated *AFFIDAVIT OF CANDACE NEFF, COMMUNICATIONS DIRECTOR OF THE DIOCESE OF GAYLORD*, along with updated and supplemental exhibits 2 through 10, as attached hereto.

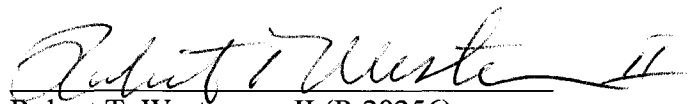
IV. Conclusion

For the foregoing reasons, an exemption from the FCC’s Closed Captioning Requirements for this one weekly program, the Diocese of Gaylord’s one-hour Sunday Mass at 8:00 a.m. is warranted and necessary in order to best serve the Mission of the Church, as well as the public interest. As shown by the prior and current Petitions, Responses and attachments, the Petitioner is entitled to an exemption from closed captioning requirements because of the categorical exemptions already existing, First Amendment guarantees, the program’s clearly

limited repeat value presented as a public service, substantial logistical difficulties being faced by this rural Diocese in providing closed captioning for the one televised Mass and the undue burden, both economically and otherwise, which the Petitioner faces if closed captioning is ordered. Petitioner's type of religious doctrinal requirements and practical deadlines for the processing of the weekly Sunday 8:00 a.m. liturgy in this rural area is unique in magnitude from the normal programming provider. Because of this significant difficulty, logistics and expense of requiring closed captioning, an exemption under Section 79.1(f), and Section 79.1(d)(8) is warranted.

ROBERT T. WESTERMAN II, PLC

By:



Robert T. Westerman II (P-28256)
Attorney for the Diocese of Gaylord
117 W. First Street
Gaylord, MI 49735
(989) 732-2400

Dated: November 8, 2013

EXHIBIT 1

Eucharistic Liturgy (Mass) from St. Mary Cathedral in Gaylord, Michigan to WFQX-TV (Fox 32) for broadcast on Sunday mornings.

There are a total of five television stations within the entire 21-county area of the Diocese of Gaylord, the nearest station being approximately 65 miles away from Gaylord. All five stations were considered and evaluated prior to our contracting with WFQX. One station only covers three of our 21 counties on the east side of the diocese; one station did not have an appropriate time slot available due to prior commitments and declined further negotiations; the two remaining stations were eliminated because we could neither meet the time nor monetary requirements for them to be able to air the Mass.

WFQX is a small Fox network affiliate station located in Cadillac, Michigan, which is approximately 85 miles away. WFQX broadcast territory includes the majority of the local territory of the Diocese of Gaylord. (See attached Exhibit 3) The taped liturgy is not distributed to any other broadcast outlet. The Diocese pays for air time to broadcast the Mass on WFQX. We do not receive any remuneration from the station for carrying the Mass.

St. Mary Cathedral in Gaylord is the mother church of the diocese and the Most Rev. Patrick R. Cooney, former Bishop of the Diocese of Gaylord, decreed the Mass would be televised from St. Mary Cathedral and in compliance with the "Guidelines for Televising the Liturgy." (See attached Exhibit 4.) His successor and most recent Bishop of the Diocese, the Most Rev. Bernard A. Hebda, reaffirmed that decree. In part, the guidelines state:

- The bishop of a diocese in which a televised Mass is produced has the responsibility to see that liturgical law is carefully observed, especially regarding the liturgical feasts and seasons.
- Whenever possible, the liturgy should be telecast live. When this is not possible, consideration may be given to pre-recording the liturgy. A liturgy that is pre-recorded for delayed telecast should be taped as it is celebrated in a local worshiping community and then be telecast at a later time on the same day... In order to reflect the integrity of the liturgical year, a pre-recorded liturgy should be taped on a date as close as possible to the dates of the actual telecast.
- Since the liturgy is the work of Christ and the work of God's people, the televised Mass should always be celebrated within a living community of God's people whose presence reveals the full, conscious and active participation of the faithful.

Because of the distance between Gaylord and the nearest broadcast station, as well as the overall rural nature of the area, it is impossible to broadcast the weekly Eucharistic Liturgy live. However, the liturgical guidelines of the Roman Catholic Church provide that participation in the Saturday Vigil Eucharistic Liturgy does fulfill the same obligations and typically carries the same readings as the Sunday morning liturgy.

In keeping with the liturgical guidelines of the Roman Catholic Church, Bishop Hebda had approved the taping of the Saturday evening Mass for broadcast on Sunday morning of the same weekend. (See attached Exhibit 4.)

Great care is taken to maintain the integrity of the liturgy.

On September 24, 2013, Pope Francis appointed the Most Rev. Bernard Hebda to Coadjutor Archbishop of Newark. The appointment was made effective immediately and thus rendered the Diocese of Gaylord "bishop-less." The Diocese of Gaylord is currently in a *sede vacante* state; that is, a vacant see without a bishop who, within the structure and tradition of the Catholic Church, has ultimate canonical right to make authoritative decisions on behalf of the Diocese of Gaylord.

Following Canon Law, Monsignor Francis Murphy, a longtime priest of the Diocese of Gaylord, was elected by the College of Consultors to serve as Diocesan Administrator until a new Bishop is appointed. Such an appointment can only be made by the Pope and it likely will be several months before that appointment is made. As of this writing there are 11 vacant sees in the U.S., one who has been awaiting the appointment of a new bishop since 2009; another who has been vacant for 17 months. During this period of waiting the Diocesan Administrator follows the age-old principle that governs the period of a vacant see: *Sede vacante nihil innovetur*, meaning "When the see is vacant, let no innovations be made." The position is charged with administering the daily operations of the diocese, but is not to institute any new initiatives or policies. The role is to maintain the status quo and to be a steward or caretaker of the things entrusted to him until they are handed over to the next bishop. This situation adds yet another layer of significant difficulty to an already extremely difficult and burdensome situation with regard to closed captioning our single weekly program because of the significance of the cost we would incur which is not already budgeted or a part of our ongoing operations.

Each week the regularly scheduled Saturday evening liturgy at St. Mary Cathedral (held at 5:00 p.m.) is videotaped by me or by one of the other two people who have been trained to operate cameras as it is being celebrated live by the priest and congregation. This same individual also performs minimal editing in order to reach the one hour time frame needed for the station. None of us involved in videotaping or producing the liturgy have formal or extensive training in camera operation, editing, equipment maintenance, etc., but have learned "on the job." There are no professional broadcast engineers involved in the production process nor to the best of my knowledge are any professional broadcast engineers within the immediate Gaylord area. The Mass is videotaped and edited using equipment installed in what was previously a storage room of at St. Mary Cathedral and is produced entirely on site. Our annual total budget for production and television broadcast of the Mass is approximately \$50,000. This includes airtime, courier expenses, equipment maintenance, supplies, etc.

The Mass itself typically ends around 6:15 p.m. The program is then minimally edited to conform to the one hour time period allotted for broadcast. The edited program is then copied (in real time) to a tape which is presented to a courier for transport to the station. This transfer currently takes place at 8:00 p.m. on the same Saturday evening. The courier then makes the 90 minute drive to Fox 32 in Cadillac. The tape must be delivered to the station no later than

midnight so that it can be broadcast on Sunday morning (currently at 8:00 a.m.) of the same weekend in order to correspond with the liturgical guidelines of the Roman Catholic Church. **Our Mass is taped live and is required to be fully post-produced within less than three hours of its conclusion.** It is broadcast approximately eight hours after receipt at the station in order to maintain close adherence to the guidelines as set forth by the Roman Catholic Church.

While a few of the prayers and responses are repeated each week, many are different. In addition, the readings appointed for the week, the homily, music, intercessions and announcements are geared toward the specific week. This is also why the program has **no repeat value**. In addition, sacraments such as baptism during the Mass, anniversaries, liturgical seasons, Feast days and special events all can change the format of the Mass or placement of liturgical elements. Because of these changes and our technological limitations, it is not possible to “pre-caption” in any way to include the few elements which may repeat for future tapings. Further, both historically and currently, the priests who celebrate the Mass and give the homily do not write their homilies (sermons) out in advance, but instead deliver them extemporaneously. Fr. James Bearss, current Pastor of St. Mary Cathedral who often presides at the Mass does not preach from a prepared text or a written outline. (See attached Exhibit 6.)

The Mass is an important part of our ministry particularly to the homebound, hospitalized, imprisoned and those who otherwise are separated from the church. We often hear from viewers how important it is to them to have a local Catholic liturgy available via television and that it helps them feel connected to their faith and other local Catholics as well as the Diocese and the wider church. We have heard from many infirmed and other individuals -- Catholic and non-Catholic alike -- who suffer with a myriad of personal circumstances which keep them from attending a church that our televised Mass lifts their spirit, enriches their faith, and provides them hope in a sometimes very lonely existence. (See attached Exhibit 7.) In addition many parishioners tell us they watch the televised Mass before actually going to Mass at their local parish as a way for them to prepare for their weekly worship service.

Travel in our rural area can also pose a significant challenge for our elderly, but in addition, weather in northern lower Michigan -- particularly in the winter months can make travel extremely hazardous for anyone (the average snowfall in Otsego County for example, where St. Mary Cathedral is located, is 124 inches), so the televised Mass provides access to a local Catholic Mass. In addition, with a shortage of priests facing our diocese, we have begun clustering parishes which has resulted in some fewer Masses being available in some areas so the televised Mass becomes even more important to our local Catholic population.

Over the 8 years that we have been broadcasting the Mass, I have received only about five inquiries about closed captioning from those in our local area though we know that our audience extends into the thousands each week. While we sincerely empathize with those who are deaf and hard of hearing, we greatly fear that if forced to provide closed captioning for our locally produced one hour a week program at this point in our history, it will not be possible, and we would have to take the Mass off the air, which will hinder our ministry to those who are homebound and unable to travel to Mass.

Over the years, in an effort to address the needs of the deaf and hard of hearing, we have continually sought assistance from several closed captioning companies as well as equipment manufacturers. However, given our particular circumstances -- especially due to our rural geographic location and our severe time constraints for production as well as a lack of available human and other resources for closed captioning the Mass, we find it virtually impossible at this time.

While we understand the propensity to believe all communities and regions are relatively similar, it is important to understand there are vast differences between rural and urban areas. The same facilities, businesses, and technology are not available in rural communities as in the metropolitan regions. As a small rural diocese with few options for broadcast at all, it was a significant challenge for us to be successful in getting the Mass on the air. It wasn't until WFQX was able to assist us in finding a courier that we were able to move forward. As indicated earlier, our annual total budget for production and television broadcast of the Mass is \$50,000.

Several the closed captioning companies we have contacted require tapes to be sent to them in advance with a turnaround time of a few days at a minimum. Obviously, that is not a workable solution in our situation because the Mass is to be at the station in its completed form less than six hours from the time the Mass ends. Three of those hours are planned simply for ensuring safe transportation of the tape by automobile to the station (the actual drive takes about 90 minutes in normal weather with additional time allowed for inclement weather conditions or emergencies). One and a half hours are dedicated specifically for dubbing and finalizing/packaging of the completed tape, with another hour and a half allotted for all editing.

The nearest closed captioning company we are aware of is approximately 200 miles away from Gaylord and some 95 miles away from WFQX.

As discussed extensively in previous requests for exemptions, we have explored numerous methods for closed captioning and we continue to do so. However, we lack the equipment, personnel, technical expertise or time to make it happen. In fact, once having reviewed our circumstances in total, some closed captioning companies have agreed with us that at this time it is simply impossible for us to closed caption our weekly Mass. (See attached Exhibit 8.)

The one possible solution that we are still exploring at this time is the possibility for having the Mass captioned live. WFQX is a very small affiliate station and has previously informed us that they do not have the necessary equipment or personnel to provide this service to us. (See attached Exhibit 9). However, as we have indicated previously, even while operating under the extension, we have continued to seek ways to provide for closed captioning. Those efforts have included continuing discussions with the station on ways to work together and we are currently exploring the possibility of a cooperative effort in the future for providing captioning the Mass as it is broadcast live. However, it will require a large expenditure of funds and increase our cost for broadcasting the Mass by more than 50% which was not budgeted for in this fiscal year and, without a Bishop in place, we are limited in what we can undertake. Contrary to what commenters have implied, a large portion of our assets as fixed assets and many funds are restricted as to how they can be used. Our operations budget are set for an entire

fiscal year long in advance, we typically need at least 18 months advance notice for such a large change. It not as simple as just reallocating funds from one line item to another because of commitments, expectations and assurances already made.

In addition, the televised Mass is just one of our many ministries. To force us to take funds from other ministries then limits how we serve in other areas which include the poor, hungry, homeless and disenfranchised as well as our catechetical ministries which are basic to our faith and curtailing them impedes our practice of our faith and treads on our religious freedoms.

It also takes time to seek grants or sponsors for such an undertaking in terms of applying, consideration and response. The grant writing and approval process is often 12-18 months and our experience with grants in other areas is often that requests are only partially funded, requiring additional funding to meet the needs. Further, securing sponsorships requires time and energy and is dependent upon the sponsor fulfilling their pledge. Michigan's economic state continues to be one of the worst in the country and our unemployment rate ranks us as 48th in the country -- and in the rural northern Lower Michigan territory of our diocese, many of our counties struggle with unemployment rates 30-55 percent higher than the national average. Because we rely on donations from parishioners, funding for our ministries -- including the televised Mass -- are directly impacted by the economic status of individuals and businesses in the area. We would certainly need to ensure that once we are able to undertake closed caption, that we are able to sustain it.

The Diocese of Gaylord continues to be committed to working toward "a deeper understanding of both the pain and potential of our neighbors who are blind, deaf, mentally retarded, emotionally impaired, who have special learning problems, or who suffer from single or multiple physical handicaps -- all those whom disability may set apart" as set out in the Pastoral Statement of the US Catholic Bishops on People with Disabilities from 1978.

Many strides have been made to include in the life of the Church those with differing abilities. More and more parishes are barrier-free, lighting is improved and structures have been redesigned. St. Mary Cathedral, as well as many of the churches in our diocese, provides personal listening devices specifically to assist the hard of hearing. Written materials are also available to help follow the Mass and allow for participation. It is our desire to be welcoming and to better minister to for all people who need special assistance, including those who are deaf or hard of hearing.

At the same time, the extreme majority of the people who currently watch our Mass on television are not deaf or hard of hearing. They simply cannot physically leave their homes to do so or they may be hospitalized, in nursing homes, in prison. The televised Mass is their link to the weekly celebration of the liturgy. If we are not granted an exemption from the closed captioning rules, we very likely will be forced to cease the televised broadcast of the Mass to our local audience. In that event, not only do the deaf and hard of hearing not gain improved access, but a much larger segment of our population who currently depend on the broadcast lose their access to the Mass as well. We do not believe that it is within the spirit of compassion, justice, or the law to enhance the rights of one group of people with disabilities by rescinding the rights of

another group. Moreover, we would like to believe that the intent of those who appropriately wish to advocate for the rights of those who are deaf and hard of hearing in society, would not at the same time wish to limit or deny the rights of others with other disabilities.

It is our strong belief that the Diocese of Gaylord qualifies for an exemption from the closed captioning rules simply on the basis that our once weekly, one hour Catholic Mass is *locally produced and distributed non-news programming with no repeat value which is not news programming, and for which the "electronic news room" technique of captioning is unavailable* as noted in the FCC Exemptions from Closed Captioning Rules Section 79.1(d) (8). We are a small diocese in a rural area working with a very small television station. We produce one program, once a week, for a local audience. We believe ours is **exactly** the type of situation for which this allowance of an exemption was intended. Further, even if the Commission decides that our one hour weekly broadcast of the Mass does not qualify for the self-implementing exemption under this section of the rules based on the position of Commenters to our previous petition, then the ambiguity that seems to exist in between the reality of who provides this kind of programming and the definitions who is responsible for captioning highlights yet another relevant factor to be considered under the "economically burdensome" petition.

We believe the Diocese of Gaylord also qualifies for an exemption from closed captioning rules because it is economically burdensome which is defined as "**significant difficulty OR expense**" (emphasis added.) It is specifically noted there are four factors that must be considered by the Commission when considering whether an economically burdensome exemption should be granted. They include: the nature and cost of the closed captions for the programming; the impact on the operation of the provider or program owner; the financial resources of the provider or program owner; and **the type of operations of the provider or program owner**. In addition, the Commission may also consider "**any other factors which are deemed relevant**" to making a determination. Not only have we demonstrated a variety of circumstances that make it significantly difficult for us to provide closed captioning at this time, not to grant an exemption when there clearly are a number of factors which fall within the criteria to qualify for an exemption and thus force us to either reallocate funds from our other ministries or to cease broadcast of the Mass also impedes our practice of our faith and that of those who rely on the televised Mass as their connection to the faith. Since an appropriate remedy by granting an exemption already exists, to violate the religious freedom granted by the First Amendment in this manner seems both unnecessary and not in keeping with the spirit upon which our country was founded.

We believe it is critically important that the Commission review the full and unique circumstances and limitations facing the Diocese of Gaylord as presented in our petition. The rules certainly do provide for exemptions in situations where closed captioning poses a special burden which we believe we have clearly demonstrated.


At the same time, we do recognize the importance of closed captioning and though we are simply unable to do so at this time, we do intend to keep abreast of developments in technology in the hope that we will be able to provide closed captioning at some point in the future. We are committed to doing what we can to bring the Good News to all, regardless of

their personal challenges. However, if our petition for an exemption is denied, we will likely be forced to discontinue broadcasting the Mass.

We therefore respectfully request the Federal Communications Commission uphold their previous decision and continue to grant the Diocese of Gaylord an exemption from the closed captioning rules and allow us to perform our ministry and practice of the Catholic faith as we have been called by our Baptism.

Because we do understand and empathize with the plight of those who are deaf or hard of hearing, at the barest minimum, we would request a three year extension in order to both allow time for the appointment of a new Bishop, and opportunity to further explore, plan for and secure funding for equipment, infrastructure and needed expertise, so that when a new Bishop arrives we might be able to implement a plan which would accomplish our mutual desire to best serve the whole of the population who rely on the televised Mass to be connected to their Catholic faith.

Further, deponent sayeth not.


Candace Neff

STATE OF MICHIGAN)
) SS
COUNTY OF OTSEGO)

On this 8th day of November, 2013, before me a notary public, in and for said county, personally appeared CANDACE NEFF, known to me to be the person described in and who acknowledged that she has read the foregoing Affidavit, by her subscribed, and acknowledged that the same was true to the best of her knowledge, information and belief.

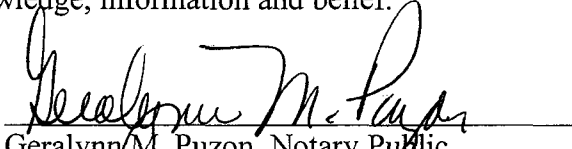

Geralynn M. Puzon, Notary Public
Acting in Otsego County, Michigan
My Commission Expires: 3/11/2019

EXHIBIT 2

Territory of the Roman Catholic Diocese of Gaylord

(Northern 21 counties of Michigan's Lower Peninsula)

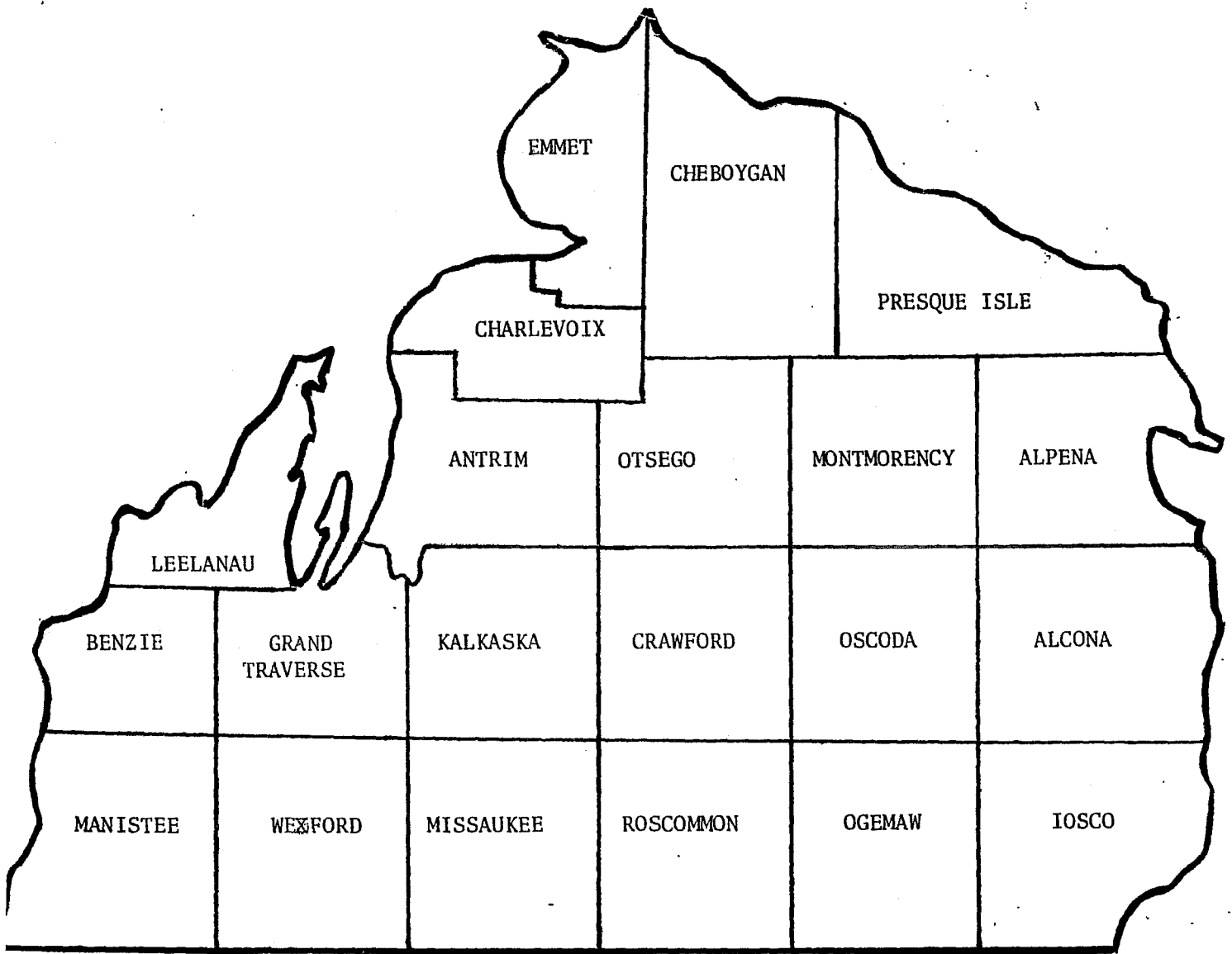




EXHIBIT 3

WFQX WFUP TV

Cadillac Traverse City

C A N  D A

• Sault Ste. Marie, Ontario

 TRAVERSE - CADILLAC
DESIGNATED MARKET AREA (DMA)

 STATION TOTAL AREA

* November 2011 NSI

** 2010 U.S.Census



FOX IN NORTHERN MICHIGAN



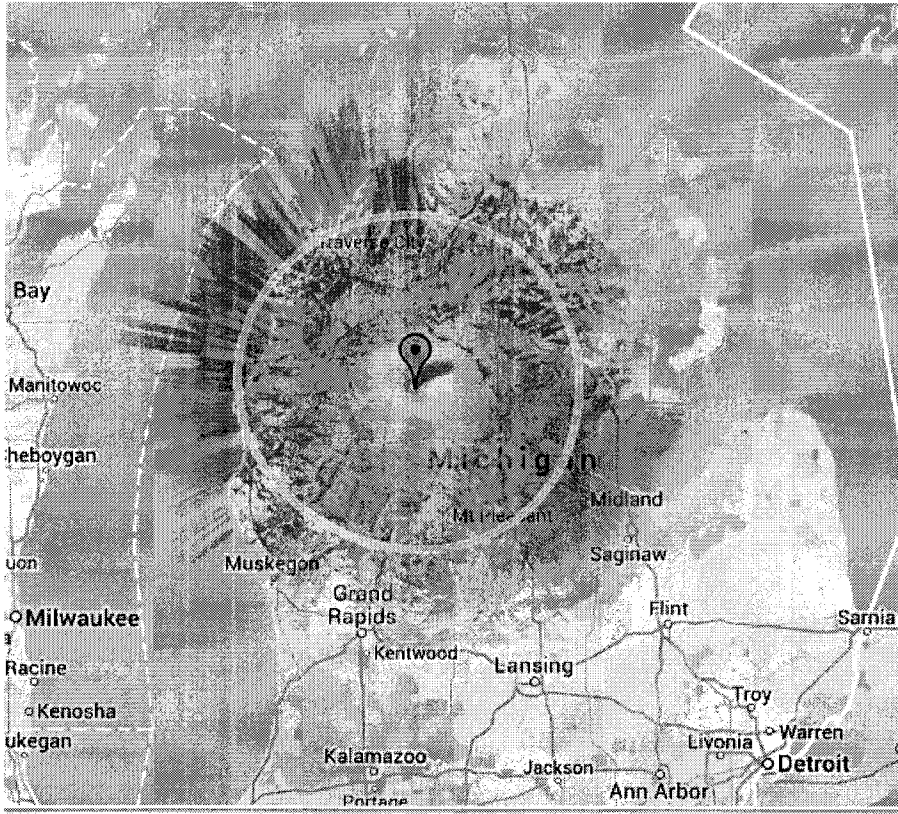
REPRESENTED NATIONALLY
BY MILLENNIUM SALES &
MARKETING

244,050
*Nielsen Designated Market
Area TV Households**

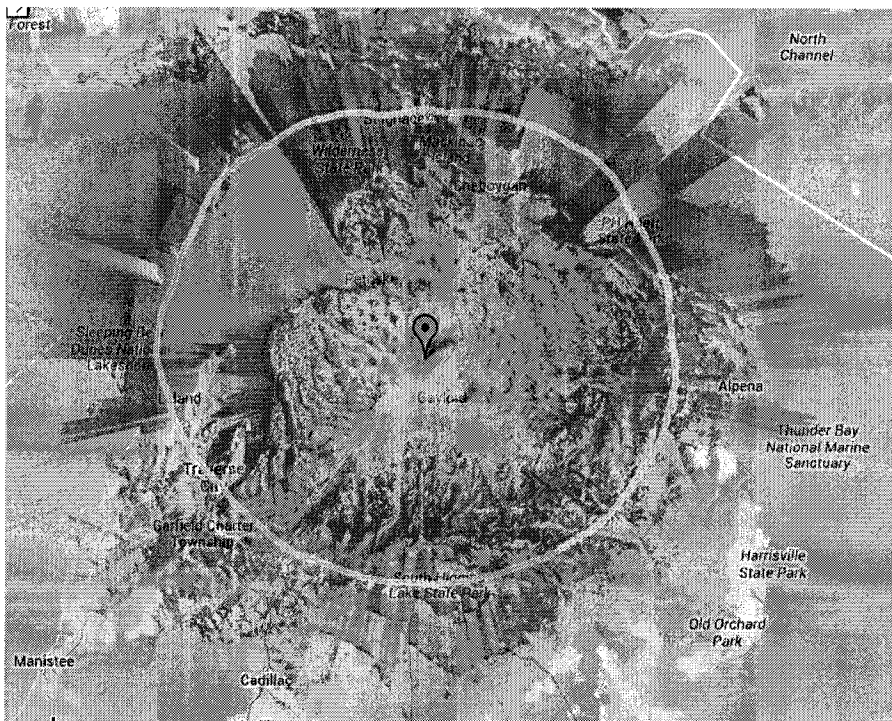
122,380
*Seasonal Northern Michigan
Households***

CADILLAC (231) 775- 3478
TRAVERSE CITY (231) 947- 7533

FOX
32
NEWS



WFQX



WFUP (simulcast
from WFQX)

EXHIBIT 4

GUIDELINES FOR TELEVISING THE LITURGY

The following guidelines were approved by the National Conference of Catholic Bishops at its November 1997 Plenary Meeting. These guidelines are offered as a resource for diocesan bishops and communication and liturgy personnel entrusted with the televising of liturgies.

The Church at worship is God's priestly people called together and united with Christ in a sacred work through which God is glorified and we are made holy (cf. *Sacrosanctum Concilium*, [SC] #7). In the eucharistic assembly, in the proclamation of the Word, and in the celebration of the sacraments, God is present in our midst. The *Constitution on the Sacred Liturgy* reminds us that "all who are made children of God by faith and baptism should come together to praise God in the midst of his Church, to take part in the sacrifice, and to eat the Lord's Supper" (SC, #10).

Yet being a part of the Sunday worshipping assembly is not always possible for all members of the community. Some people have been hospitalized, home-bound, or imprisoned and do not have the opportunity to be physically present with a regular worshipping community. For this reason, many dioceses telecast the Mass and other liturgies as a way of reaching out to those who cannot be physically present for the community's celebration of the eucharist. The televised Mass is never a substitute for the Church's pastoral care for the sick in the form of visits by parish ministers who share the Scriptures and bring Communion, nor is it ever a substitute for the Sunday Mass celebrated within a parish faith community each week. However, televising the Mass is a ministry by which the Church uses modern technology to bring the Lord's healing and comfort to those who cannot physically participate in the liturgical life of the local Church and who often experience a sense of isolation from the parish and its regular forms of prayer and worship. In addition, many regard televised liturgies as a means of evangelization, of sharing the Good News of Jesus Christ and promoting the Church's worship via modern means of communication (cf. *Inter Mirifica*, #14).

The *Constitution on the Sacred Liturgy* clearly articulated the primary importance of the faithful's "full, conscious, and active participation" which is called for "by the very nature of the Liturgy" and which is their "right and duty" by reason of their baptism (SC, #14). As members of the worshipping assembly, we are called to join the offering of ourselves with the offering of Christ. Thus, our participation in the eucharist involves both internal and external expression including, but not limited to, an attitude of prayer and attention, physical movement, sentiments of praise and adoration, and joining in the sung and recited responses.

Telecasts, by their very nature, attempt to connect people and places that are physically separated. While there may be a tendency for the medium of television, with its inherent lack of physical interaction, to lead people to more passive roles as spectators, some elements of the telecasts can engage the viewers as participants. Although the televised Mass is not a substitute for participation in the actual celebration of the Church's liturgy,

it does provide an opportunity for those unable to be physically present 1) to identify with a worshipping community, 2) to hear the Word of God, 3) and to be moved to expressions of praise and thanksgiving.

Diocesan liturgists and communication specialists who work to provide the televising of the Sunday Liturgy offer a special service, often under very difficult conditions. It takes special skills and pastoral sensitivity to produce a televised celebration of the Mass that is liturgically sound, given the limits imposed by the medium itself and the difficulties often associated with the availability of air time and the funding of such broadcasts.

The *Constitution on the Sacred Liturgy* notes that "Radio and television broadcasts of sacred rites must be marked by discretion and dignity, under the leadership and direction of a competent person appointed for this office by the bishops. This is especially important when the service to be broadcast is the Mass" (SC, #20).

In many instances, the Church does not have complete control over the televising of the liturgy. The Church is a guest in an environment not its own and constraints (length of air time, time of telecast, setting, etc.) are often imposed that are less than ideal. In addition, dioceses and religious groups are finding it very difficult even to be able to purchase air time for a telecast at an hour that is reasonable for viewers who are sick or elderly. For these reasons, a joint Task Force representing the Committee on Communications and the Committee on the Liturgy of the National Conference of Catholic Bishops developed the following considerations to assist bishops and to guide those who are responsible for televising the liturgy.

Principles

The first requirement for good telecast liturgies is good liturgical celebration. When the Mass or other liturgies are televised, those responsible for the planning, production, and celebration must make every effort to respect basic liturgical principles, including:

- giving careful attention to the modes of Christ's presence in the liturgy, e.g., the Word, the eucharistic bread and wine, the assembly, the priest (SC, #7);
- following the directives of the *General Instruction of the Roman Missal (GIRM)*;
- the full, conscious, and active participation of the faithful;
- the integrity of the liturgical year;
- a homily addressed to the assembly, while taking into account those who watch on television (GIRM, #41);
- the appropriate use of trained liturgical ministers;
- the use of live liturgical music that fits the celebration;